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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ANDREA KNOTT, Defendant and Appellant.	B277799 Los Angeles County Super. Ct. No. BA435729

APPEAL from an order of the Superior Court of Los Angeles County, Richard S. Kemalyan, Judge. Affirmed as modified in part, reversed in part, and remanded with directions.

Melissa J. Kim, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Andrea Knott appeals from a probation order entered after she was convicted of one count of welfare fraud and two counts of perjury. She contends that there is insufficient evidence to support one of her perjury convictions because her false statement was not material; that both perjury convictions should be reversed because the court failed to instruct the jury that evidence of a statement's falsity must be corroborated; that the court improperly excluded defense evidence that would have impeached the prosecution's main witness; that the court erroneously imposed various court fees as probation conditions; and that the court improperly ordered concurrent probationary terms for two of the three counts. We conclude there is insufficient evidence to support count 6 and the court's instructional error was prejudicial as to count 5. We therefore reverse counts 5 and 6, modify the court's probation order to delete the condition that defendant pay court fees, affirm in part as modified, and remand for further proceedings.

PROCEDURAL BACKGROUND

By amended information filed January 7, 2016, defendant was charged with one count of welfare fraud (Welf. & Inst. Code,[1] § 10980, subd. (c)(2); count 1), four counts of perjury by false application for aid (Pen. Code, § 118, subd. (a); count 2 [Feb. 1–Mar. 31, 2013], count 3 [Apr. 1–June 30, 2013], count 4 [July 1–Sept. 30, 2013], count 5 [Oct. 1, 2013–Feb. 28, 2014]), and one count of perjury by declaration (Pen. Code, § 118, subd. (a);

[1] All undesignated statutory references are to the Welfare and Institutions Code.

count 6 [Mar. 1–June 30, 2014]). Defendant pled not guilty. After a jury trial at which she did not testify, defendant was convicted of counts 1, 5, and 6 but acquitted of counts 2 and 3.[2]

The court suspended imposition of sentence and granted defendant three years' formal probation. Among other conditions of probation, defendant was ordered to serve 90 days in county jail, perform 200 hours of community service, and pay three $40 court operations assessments (Pen. Code, § 1465.8, subd. (a)(1)) and three $30 criminal conviction assessments (Gov. Code, § 70373).

Defendant filed a timely notice of appeal.

FACTUAL BACKGROUND

1. February 2013 Aid Application

On September 1, 2012, defendant moved into a rental property at 358 E. Pearl Street in Pomona. Jocelyn Sicat managed the property. Before defendant's move, she had received public welfare benefits in San Bernardino County.

Though aid recipients can transfer aid to another county, on February 26, 2013, defendant instead filed a new application with the Los Angeles County Department of Public Social Services (DPSS) for CalWORKs (cash aid), CalFresh (food stamps), and Medi-Cal benefits.[3] The application was granted and defendant's benefits were authorized until December 31, 2013.

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[2] During trial, the prosecutor dismissed count 4.

[3] Because the jury acquitted defendant of perjury for the period covering February 1, 2013, through June 30, 2013, we do not address this application in detail.

2. Defendant is Evicted from the Pomona House

On May 23, 2013, Sicat notified defendant that she was delinquent in rent payments. On July 3, 2013, Sicat filed an unlawful detainer action. The action was successful, and defendant was ordered to vacate the property by August 22, 2013. Though Sicat had been to the house numerous times during defendant's tenancy, she had never seen a five- or six-year-old child or a child's bedroom.

3. January 2014 Aid Recertification and Reapplication

On November 9, 2013, about two months before defendant's benefits were set to expire, DPSS sent a CalWORKs and CalFresh annual redetermination/recertification letter to defendant's Pomona address. The letter indicated that defendant's certification period would end on December 31, 2013, and that a recertification telephone interview had been scheduled for December 5, 2013.

On November 22, 2013, DPSS sent defendant a letter indicating that it had received information from the Employment Development Department that defendant had recently become employed and requesting pay stubs from her new employer. When defendant missed her December 5, 2013, phone interview, DPSS sent her a notice of CalWORKs termination, stopping defendant's cash aid as of December 31, 2013. The next day, defendant was notified that she missed her interview; the letter asked her to contact her eligibility worker to reschedule.

On January 28, 2014, defendant reapplied for benefits. She had to reapply (rather than recertify) because she had not completed her recertification before the original certification period ended. In the application, which defendant signed under

penalty of perjury, defendant represented that she was living in Pomona with two other adults, Robbie and Karl. She paid $200 per month in rent and split the cost of utilities with Robbie.

Defendant wrote that her daughter, Audrey M., lived with her. Audrey attended Newman Elementary School. Audrey's father, Eric M., was absent—rather than dead, disabled, or unemployed, which were the other options on the form. He paid $50 per month in child support and provided Audrey with health insurance. To qualify for both CalWORKs and CalFresh from DPSS, a minor must reside in the same home as the applicant. Though *absent* can mean the parent is not involved in the child's life, it can also mean that the parent is not living in the applicant's home with the child.

On February 4, 2014, eligibility worker Wendy Ho accepted defendant's application for aid, which was dated January 28, 2014. Ho went over the form with defendant in person. Defendant signed and certified the application under penalty of perjury. Later that day, Ho approved CalFresh benefits for the certification period January 16, 2014–December 31, 2014. CalWORKs and Medi-Cal benefits had been approved several weeks earlier.

4. June 2014 Affidavit

In June 2014, Javier Sanchez was defendant's DPSS eligibility worker. A monthly report form, known as a SAR7, was sent to defendant at the Pomona house; the form requires aid recipients to state any changes including address, income, and people living in the home. The SAR7 was returned as "not deliverable as addressed and unable to forward." On June 13, 2014, defendant called DPSS, confirmed her Pomona address, said her mail was returned in error because she lived with other

tenants, indicated she would go to DPSS to meet with her eligibility worker, and asked for a return call. Nevertheless, notices of termination of all aid and an appointment letter were mailed to defendant in Pomona shortly thereafter.

On June 25, 2014, defendant met with Sanchez at DPSS.[4] Defendant filled out an affidavit on which she wrote that she lived at 358 E. Pearl Street; she signed the form above a perjury warning.

On July 15 2014, defendant called DPSS and asked them to terminate her aid. Sanchez terminated the aid based on defendant's unknown whereabouts.

5. Eric's Testimony

Eric testified that eight-year-old Audrey was his daughter. In 2008, Eric and defendant broke up. Eric described the breakup as not "nice." Defendant and Audrey moved out of Eric's parents' home, where they had been living. In July 2008, the family court in San Bernardino County awarded Eric and defendant joint custody of Audrey and ordered Eric to pay $300 per month in child support. The support was garnished from Eric's wages.

Though Audrey previously lived with defendant a couple of days a week, starting in 2011, she moved in with Eric full time.[5] At the time, he and Audrey, who was then in kindergarten, lived with his parents in Chino. Eric completed Audrey's kindergarten

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[4] Though Sanchez had no memory of meeting with defendant, the documents in exhibit 6k indicated he had.

[5] Though Eric claimed there was no court order in place governing their custody exchanges, the parties stipulated that on April 1, 2011, the family court had ordered custody exchanges to occur at the Chino Law Enforcement Station.

registration form and indicated Audrey lived with him. He did not include defendant's phone number on the form because she changed it too often for him to keep track of it.

At some point, defendant moved to Pomona, and Eric took Audrey there for three visits. The first time Eric brought Audrey to Pomona (in late February or March 2013), defendant had called Eric and said, "I want to see Audrey. This is where I live." They also visited on Mother's Day that year. Audrey never spent the night in the house, and Eric never went inside.

The legal custody arrangement was for a 50/50 custody split with defendant having custody from Wednesday at 9:00 a.m. through Saturday at 12:00 p.m.—but since 2011, defendant had never taken actual physical custody of Audrey. Although defendant claimed Audrey lived with her on Wednesdays through Saturdays, defendant instead picked Audrey up from school at 3:30 p.m. and dropped her off at Eric's apartment at 5:00 p.m. During spring break, defendant only spent one day with Audrey, and Audrey had not spent the night with defendant since 2011. Nevertheless, $300 had been garnished from Eric's wages every month since 2008— and Eric wanted his child support obligations to end.

In March or April 2013, Eric sought child support from defendant, but was told she was receiving government aid. In response, he and his girlfriend, Cynthia M., each called DPSS to report defendant for welfare fraud. Eric later signed an affidavit stating that Audrey had lived with him since her birth in 2007 and had never lived with her mother.

Next, Eric hired a paralegal, who advised him to keep track of defendant's contact with Audrey. In July 2013, Eric began keeping a log with the expectation that he would have to show it

to the family court. Typically, Eric would handwrite an entry in a notebook within two days of an event. At the end of the month, he would transfer the handwritten entries to an online calendar template and print the calendar. Eric destroyed the notebooks and did not save the electronic calendars. The printed calendars were admitted into evidence.

For example, on July 1, 2013, Eric wrote, "No call. No show." Three days later, defendant left a voicemail. For July 6, 2013, Eric noted that defendant came over and spent 20 minutes with Audrey. For July 7, 2013, Eric noted that defendant spoke with Audrey for five minutes. For July 29, 2013, Eric wrote that defendant spoke with Audrey for eight minutes, but did not come over to visit Audrey.

Eric's entries for August, September, October, November, and December 2013 listed similarly limited contact between defendant and Audrey. For August 16, 2013, for example, Eric noted that defendant visited for 30 minutes. For August 20, 2013, Eric noted that defendant called and talked to Audrey for four minutes. In September 2013, Audrey had no contact at all with defendant. The next contact with defendant was on October 15, 2013, when defendant called and spoke with Audrey for 12 minutes. On October 17, 24, and 30, 2013, defendant visited Audrey for about an hour. Eric's calendar for November 2013 indicated that defendant visited with Audrey for about eight minutes on November 7, 2013, and his calendar for December 2013 indicated that defendant visited twice.

The calendar for January 2014 indicated that defendant called and spoke with Audrey on January 19 for about three minutes and that, on January 27, defendant sent Eric a text message asking to make an exchange to pick up Audrey. This was

the first time since Eric started keeping the calendars that defendant had asked for a custody exchange. But defendant never picked Audrey up that day, and Audrey spent the night at Eric's apartment.

Each morning, Eric dropped Audrey off before school at a child development program on the Newman campus called the Fun Club. He obtained copies of the sign-in logs for the program, which were admitted into evidence. Those records showed that, on August 27, 2013, he dropped Audrey off at 6:58 a.m. and picked her up after school at 4:09 p.m. The sign-in sheets indicated that Eric dropped Audrey off every school morning in September, October, November, and December 2013 as well as in January and February 2014. The only exception was when his girlfriend, Cynthia, dropped off Audrey one morning.

On March 18, 2014, Eric went to family court and told the judge that Audrey had been living with him since 2011 and that consequently, he no longer wanted to pay child support. Eric did not bring his calendars with him to court. Instead, he presented the monthly attendance logs from the Fun Club.

After the hearing, defendant occasionally began picking up Audrey from child care at 3:30 p.m. and returning her to Eric's home at 5:00 p.m.—but defendant never kept custody of Audrey through Saturday as the custody agreement allowed. In April 2014, defendant became more involved in Audrey's life, picking her up several times, but Audrey never stayed with her overnight. The Fun Club sign-in sheets still showed Eric dropping off Audrey each school morning.

In late 2014, Eric and Audrey moved with Cynthia to an apartment in Chino. It was not until February or March 2015 that Audrey spent the night with defendant again. By then,

defendant was living in Ontario. In February 2015, defendant started taking Audrey on her custody days.

6. Audrey's School Records

Nicole Lanter, the registrar at Newman Elementary School in Chino, testified about Audrey's school registration. According to the registration form, Audrey lived with Eric in Chino, which was in Newman's boundaries. No contact information for Audrey's mother had been provided. Defendant's phone number was also missing from Audrey's first grade registration form; for second grade, defendant's number was filled in; for third grade, defendant's number was missing.

Lanter explained that information was entered into the school's computer system based on the emergency card sent home at the beginning of the school year. The emergency card was renewed annually, and each parent could request and separately file a card. On Audrey's card, Eric and defendant were both listed as parents.

Lanter had no access to records from the Fun Club, the before/after school program located at the school.[6] After school, Fun Club children go straight to Fun Club, and the program is responsible for supervising parent pick-up of the kids.

Lanter believed defendant had given her a court order at some point but could not recall the contents of the order. Lanter was the person responsible for any custody court orders, and in her five years at Newman, she had never had a parent present a court order in an attempt to pick up a child.

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[6] No one from the Fun Club staff testified at trial.

Lanter testified that if Audrey lived in Pomona, which was across the county line, the parent would have to obtain a transfer for the child to attend Newman. Audrey's file contained no transfer paperwork and indicated that Audrey lived in Chino.

7. Stipulations

The parties stipulated that:

- Audrey did not need to testify;
- defendant and Eric are Audrey's parents;
- on April 1, 2011, the family court found by agreement of the parties that custody exchanges would take place at the Chino Law Enforcement Station unless the parties prepared a formal order with the address of an alternate location;
- on February 11, 2015, Audrey told a counselor that she used to live primarily with her mother, and she is not sure what happened that made her change custody to her father;
- Audrey could not provide any dates or times regarding custody;
- three incident reports from the Chino Police Department were admitted into evidence. The reports spanned a three-week period in February and March 2013 and included information about Eric's failure to comply with the court-ordered custody exchange.

CONTENTIONS

Defendant contends: (1) there is insufficient evidence that her false statement in count 6 was material; (2) the court

prejudicially erred by failing to instruct the jury that Eric's testimony that defendant's statements were false had to be corroborated; (3) she was denied the right to present a defense when the court excluded four reports showing Eric had failed to show up for custody exchanges; (4) various court fees were improperly imposed as probation conditions; (5) the concurrent terms of probation for counts 5 and 6 should have been stayed under Penal Code section 654; and (6) probation should have been imposed once for the entire case rather than once per count.

DISCUSSION

1. There is insufficient evidence to support count 6.

A criminal defendant may not be convicted of any crime unless the prosecution proves every fact necessary for conviction beyond a reasonable doubt. (U.S. Const., 5th & 14th Amends.; see Cal. Const., art. I, §§ 7, 15; *In re Winship* (1970) 397 U.S. 358, 364; *People v. Tenner* (1993) 6 Cal.4th 559, 566.) "This cardinal principle of criminal jurisprudence" (*Tenner*, at p. 566) is so fundamental to the American system of justice that criminal defendants are always "afforded protection against jury irrationality or error by the independent review of the sufficiency of the evidence undertaken by the trial and appellate courts." (*United States v. Powell* (1984) 469 U.S. 57, 67.) Defendant contends there is insufficient evidence of materiality to support her perjury conviction in count 6. We agree.

1.1. Standard of Review

In assessing the sufficiency of the evidence to support a conviction, we review the entire record to determine whether any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. (*People v. Albillar* (2010) 51 Cal.4th

47, 59–60.) "The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

Deference is not abdication, however, and substantial evidence is not synonymous with *any* evidence. " 'A decision supported by a mere scintilla of evidence need not be affirmed on appeal.' [Citation.] Although substantial evidence may consist of inferences, those inferences must be products of logic and reason and must be based on the evidence." (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) Similarly, we "may not … ' "go beyond inference and into the realm of speculation in order to find support for a judgment." ' " (*People v. Franklin* (2016) 248 Cal.App.4th 938, 947; *People v. Waidla* (2000) 22 Cal.4th 690, 735 [speculation is not evidence and cannot support a conviction].) Evidence that merely raises a strong suspicion of guilt is insufficient to support a conviction. (*People v. Thompson* (1980) 27 Cal.3d 303, 324.)

1.2. Elements of Perjury

"Every person who … certifies under penalty of perjury … and willfully states as true any material matter which he or she knows to be false, is guilty of perjury." (Pen. Code, § 118, subd. (a); see CALCRIM No. 2640.) Not every false statement will qualify: since early common law, materiality has been an

" 'essential element' " of perjury. (*People v. Kobrin* (1995) 11 Cal.4th 416, 419.)

" 'Deciding whether a statement is "material" requires the determination of at least two subsidiary questions of purely historical fact: (a) "what statement was made?" and (b) "what decision was the agency trying to make?" The ultimate question: (c) "whether the statement was material to the decision," requires applying the legal standard of materiality … to these historical facts.' [Citation.]" (*People v. Morera-Munoz* (2016) 5 Cal.App.5th 838, 858 (*Morera-Munoz*).)

A "false statement is material if it could probably influence the outcome of the proceeding … ." (*People v. Rubio* (2004) 121 Cal.App.4th 927, 933.) That is, "the false statement must be important to the matter under discussion." (*Ibid.*) False statements on other matters are not perjury. (*Ibid.*) Materiality is assessed using an objective standard in which the fact-finder determines whether the statement has "the *potential* to influence a listener who happens to be a government official in the exercise of his or her official action." (*Morera-Munoz*, *supra*, 5 Cal.App.5th at p. 859.)

Here, the prosecution alleged in count 6 that defendant committed perjury sometime between March 1, 2014, and June 30, 2014, when she affirmed that she lived at 358 E. Pearl Street in Pomona.[7] The jury was instructed that a statement is material

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[7] In response to our request for supplemental briefing, the parties agreed that this was the false statement the prosecution *intended* to allege. The jury was erroneously instructed, however, that the false statements at issue in count 6 were "that Audrey M[.] was living with [defendant] in Pomona and that the child needed aid because Eric M[.] was an absent parent"—despite there being no evidence that defendant certified either of those statements during the count 6 period. Because

"if it is probable that the information would influence the DPSS to release aid, benefits, or funds to the defendant—or to a child of the defendant."

To determine whether defendant's statement that she lived at 358 E. Pearl Street "could probably influence the outcome" (*People v. Rubio*, *supra*, 121 Cal.App.4th at p. 933) of DPSS's decision to release government benefits to defendant, we must first address the scope of the state's and counties' discretion to reduce or deny public welfare benefits.

1.3. Structure of California's Safety Net Programs

Many of California's public welfare programs are designed to complement and comply with federal programs. For example, CalWORKs (California Work Opportunity and Responsibility to Kids; § 11200 et seq.) "provides aid to families with related children under 18 whose parents cannot support them. ([ ] § 11250, subds. (a)–(c).) CalWORKs is funded in part by the federal block grant program known as TANF [Temporary Assistance for Needy Families]. (42 U.S.C. § 601 et seq.; [ ] §§ 10100–10101, 11200.5.)" (*Barron v. Superior Court* (2009) 173 Cal.App.4th 293, 299; *Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1244 [CalWORKs created in response to federal welfare reform].) For CalFresh, the state's version of SNAP,[8] which provides funds to low-income households to buy food (§ 18900 et seq.), the United States Department of

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we conclude there is insufficient evidence of materiality to support a perjury conviction for the statement defendant *actually* made, we do not address the instructional error.

[8] SNAP stands for Supplemental Nutrition Assistance Program. It was formerly known as the Food Stamp Program.

Agriculture pays the full cost of the benefits and half the cost of running the program, such as rent for local offices, case worker salaries, and printing application forms. (7 C.F.R. §§ 277.1, 277.4.) State and local governments pay the remaining administrative costs.

The California Department of Social Services (Department) supervises the provision of public welfare services and the disbursement of state and federal funds. (§§ 10054, 10600, 10609, 10613.) In accordance with its legislative mandate, and to assure compliance with federal requirements, the Department has adopted regulations and standards governing these programs. (§§ 10553, 10554, 10604.) Those standards are found in the Manual of Policies and Procedures (MPP). (*Christensen v. Lightbourne*, *supra*, 15 Cal.App.5th at p. 1246.)

County welfare departments, in turn, implement Department policy and run welfare programs at the local level. (§ 10800.) The Department often communicates policy direction to counties through All County Letters (ACLs), which it posts online. Counties must comply with the Department's regulations and abide by its lawful directives. (§ 10802.)[9]

Taken together, " 'the statutes establish an administrative hierarchy in which the [Department] exercises ultimate supervisory authority over the payment of welfare benefits and the county boards of supervisors, acting through the county

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[9] Medi-Cal, California's program for providing healthcare to the poor, is supervised by the Department of Health Services. (§ 10740.) The Welfare and Institutions Code has similar provisions concerning the powers and duties of that department in its supervision and administration of public health care services and medical assistance. (§ 10744.)

welfare departments, function as agents of the [Department] in administering such payments.' [Citation.]" (*Pich v. Lightbourne* (2013) 221 Cal.App.4th 480, 485.) Accordingly, eligibility standards for aid, consistent with federal requirements, are determined at the state level, and counties have the purely ministerial duty of carrying out those decisions. In Los Angeles County, those ministerial duties are performed by DPSS.

Counties, not the Department, receive applications, certify eligible households, and disburse aid based on state standards. (§ 11050; MPP § 63-104.2.) But while a person may not be granted public assistance unless he or she is a California resident (§ 11105, subd. (a)), *county* residence is not a qualification for aid under any public assistance program (§ 11102, subd. (a); MPP § 42-400)—and a local welfare office may not discontinue aid merely because a recipient moves to another county. (See, e.g., § 17106 [county may not impose residence requirements on an indigent person's ability to receive surplus food under any program supported by the federal government, regardless of whether the food is distributed by a county agency].)[10]

Previously, when a CalFresh recipient moved from one county to another, benefits in the original county were discontinued, and recipients had to re-apply in the new county. (ACL No. 11-22, p. 1.) In 2011, the Legislature changed that procedure to "ensure that eligible households do not experience

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[10] There is one exception: to receive general assistance, a person must be a resident of the county in which he or she applies. (§ 17100.) As such, a county may adopt residency requirements for purposes of determining a person's eligibility for general assistance. (§ 17001.5, subd. (a)(1).) General assistance is not at issue in this case. (See §§ 17000, 17107 [requiring counties to provide general assistance].)

an interruption in benefits" when they move. (*Id.*, p. 2; § 11053.2 [Stats. 2011, ch. 227, § 40]; see MPP §§ 40-187–40-197 [CalWORKs transfer process].) Under the new system, counties are instead required to transfer benefits to the new county using the inter-county transfer procedure. (ACL Nos. 11-22 [process for inter-county transfers], 13-78 [CalFresh clarifications].)

Under the transfer process, benefits are transferred from the sending county to the receiving county with no redetermination or recertification of eligibility. The new county cannot interview the aid recipient, request a new application, or demand verification. (ACL No. 13-78, p. 2; ACL No. 17-58, p. 4.) It must simply continue disbursing benefits until the end of the already-certified benefit period.

Similarly, while benefit recipients are supposed to report a move to their county welfare office within 10 calendar days, failure to report a move, by itself, cannot be the basis for reducing or denying benefits—or for taking any other negative action. (ACL No. 10-01, p. 2; ACL No. 17-58, p. 2.)

1.4. Defendant's statement was not material to the Department's decision.

The People insist defendant's statement in the June 25, 2014, affidavit that she lived at 358 E. Pearl Street in Pomona "clearly had the potential to influence the eligibility workers" at DPSS because it "misled [DPSS] into believing that there had been no household change since she began receiving benefits."

But materiality is "not subjective to the listener government officer." (*Morera-Munoz*, *supra*, 5 Cal.App.5th at p. 859.) Here, defendant was not accused in count 6 of making any sworn statements about her assets or the number of people in her household. The only false statement defendant made in the

count 6 period was about her address—and to sustain her conviction for perjury, that statement, *standing alone*, must be material.

Had defendant told DPSS that she had moved to San Bernardino County, Department policy would have dictated that DPSS initiate an inter-county transfer. During the transfer period, Los Angeles County would have been required to continue paying benefits to defendant. Moreover, defendant would not have to establish eligibility in San Bernardino until her current certification period expired at the end of the year.

It is certainly possible that informing DPSS of the move could have raised *other* questions about *other* aspects of defendant's household situation—such as the amount of her rent or whether she retained custody of Audrey. It is also possible that defendant's answers to *those* questions could, in turn, have revealed that she was eligible for fewer government programs. But those questions are not before us because the prosecution presented no evidence that defendant made false statements on any of those topics during the relevant period. Nor is there any evidence that defendant was receiving benefits from another county during the count 6 period. Put differently, the prosecution did not present any evidence that defendant's false statement in her June 2014 affidavit "influence[d] the DPSS to release aid, benefits, or funds to the defendant—or to a child of defendant."

The only relevant question here is whether defendant's false statement itself was material. It was not. We therefore reverse count 6.

2. Instructional Error

Defendant contends the court erred by failing to instruct the jury that to convict her of perjury, Eric's testimony that the

statements were false needed to be corroborated by other evidence. The People contend the issue is forfeited and any error was harmless. We conclude it is reasonably likely defendant would have achieved a better result if the jury had been properly instructed, and we reverse count 5.

2.1. The court failed to instruct the jury that evidence of a statement's falsity must be corroborated.

" 'It is settled that in criminal cases, even in the absence of a request, the trial court must instruct on the general principles of law relevant to the issues raised by the evidence. [Citations.] The general principles of law governing the case are those principles closely and openly connected with the facts before the court, and which are necessary for the jury's understanding of the case.' [Citation.]" (*People v. Najera* (2008) 43 Cal.4th 1132, 1136.)

"The Legislature has determined that because of the reliability questions posed by certain categories of evidence, evidence in those categories by itself is insufficient as a matter of law to support a conviction. For example, the Legislature has required that … the testimony of a single witness in a perjury case as to the falsity of the defendant's perjurous statement (Pen. Code, § 118, subd. (b)) must be corroborated before a conviction can be based" on it. (*People v. Cuevas* (1995) 12 Cal.4th 252, 261.) Thus, to prove falsity, the prosecution must present both direct evidence—witness testimony—that the statement was false *and* other evidence corroborating that testimony. (Pen. Code, § 118, subd. (b) ["No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence."].)

Absent an instruction on the corroboration requirement, "there is a risk that a jury—especially a jury instructed in accordance with [CALCRIM No. 301] that the testimony of a single witness … is sufficient for proof of any fact—might convict the defendant without finding the corroboration" Penal Code section 118 requires. (*People v. Najera*, *supra*, 43 Cal.4th at p. 1137.) Thus, the "court has a sua sponte duty to instruct on the corroboration requirement of section 118, and the failure to do so is error. [Citation]." (*People v. Trotter* (1999) 71 Cal.App.4th 436, 439–440.)

We "may review defendant's claim of instructional error, even absent objection, to the extent his [or her] substantial rights were affected." (*People v. Townsel* (2016) 63 Cal.4th 25, 59–60; Pen. Code, § 1259 [we "may also review any instruction given, refused or modified, even though no objection was made thereto in the lower court, if the substantial rights of the defendant were affected thereby"]; Pen. Code, § 1469 [same].)[11]

2.2. The error was prejudicial.

While defendant likens the failure to instruct on the corroboration requirement to the failure to instruct on an element of the offense, corroboration is instead an evidentiary rule about the type and quantum of evidence needed to prove the falsity

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[11] Although the People appear to acknowledge the court's sua sponte duty to instruct on the corroboration requirement, they also insist defendant somehow forfeited the error by failing to object below. (See Garner (2d ed. 1995) A Dictionary of Modern Legal Usage 838 [defining *sua sponte* as "on its own motion; without prompting"].) This argument lacks merit. (See *People v. Di Giacomo* (1961) 193 Cal.App.2d 688, 698 [court's sua sponte duty to instruct on corroboration requirement].)

element of perjury. As such, the error is one of state law, which we review under *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*). (*People v. Alcocer* (1991) 230 Cal.App.3d 406, 413; *People v. Whisenhunt* (2008) 44 Cal.4th 174, 214 [failure to instruct on accomplice corroboration assessed under *Watson*].) Under *Watson*, the error is prejudicial if it is reasonably probable defendant would have achieved a more favorable verdict absent the error. (*Watson*, at pp. 836–837.)

A reasonable probability "does not mean more likely than not, but merely a *reasonable chance*, more than an *abstract possibility*. [Citations.]" (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715, citing *Watson*, *supra*, 46 Cal.2d at p. 837.) An error is prejudicial whenever the defendant can " 'undermine confidence' " in the result achieved at trial. (*College Hospital Inc.*, at p. 715) "In assessing prejudice, we consider both the magnitude of the error and the closeness of the case." (*People v. Vasquez* (2017) 14 Cal.App.5th 1019, 1041.)

"The focus of the corroboration requirement in the perjury statute is on the falsity of the statement … ." (*People v. Trotter*, *supra*, 71 Cal.App.4th at p. 440.) That is, the "corroboration requirement assumes that the defendant has made a statement under oath, and the issue for resolution is the veracity of that statement." (*Ibid.*) For purposes of count 5, the People alleged that between October 1, 2013, and February 28, 2014, defendant falsely stated that Audrey was living with defendant in Pomona and the child needed aid because Eric was an absent parent. These statements were made as part of defendant's January 28, 2014, aid certification.

To prove the falsity element of count 5 and establish that defendant lied on her aid certification about where Audrey was

living, the prosecution needed to (1) present evidence that the statement was false—i.e., evidence that Audrey was not, in fact, living with defendant in January 2014 *and* (2) present *other* evidence corroborating that evidence. To prove the statement was false, the prosecution introduced Eric's testimony that Audrey was living with him for the entire period in question. Accordingly, this was the testimony that needed to be corroborated.

Two pieces of evidence tended to corroborate Eric's testimony that Audrey was living with him rather than with defendant during the count 5 period: the Fun Club attendance sheets and the family court child support order reducing Eric's child support payment to zero. But both pieces of evidence had a critical flaw: they depended on Eric's testimony. Eric provided the Fun Club logs to the prosecution, laid the foundation for them in court, and explained their significance to the jury. As for the child support order, according to Eric, defendant attended the hearing and told the commissioner that "she did have Audrey during her time, which was Wednesday through Saturday." Eric, in turn showed the court the Fun Club attendance sheets. Thus, the court's decision to stop Eric's child support payments was based on evaluating, by a preponderance of the evidence, the very same evidence the jury was asked to evaluate beyond a reasonable doubt: Eric's credibility and the Fun Club forms he provided. Moreover, the court's child support order was retroactive only to February 1, 2014—*after* defendant's January 2014 aid certification.

The People point to Audrey's school records in San Bernardino as additional evidence that Audrey did not live with defendant. To be sure, Audrey's school records supported inferences that Eric had enrolled her in school and that she lived

with him in San Bernardino County at least part-time. But Eric was the person who filled out the enrollment forms. His failure to include defendant's information on those forms tells us little about whether Eric was telling the truth about where Audrey lived. Indeed, Audrey apparently did not need to live with Eric full-time in order to attend Newman Elementary School. She had always attended Newman—including in February 2013, when the jury concluded she was living with defendant.[12]

Certainly, corroborating evidence can be slight. It need not, by itself, be enough to prove falsity. (*People v. Slaughter* (2002) 27 Cal.4th 1187, 1204.) The question before us, however, is not whether there is sufficient corroboration to sustain the conviction, but rather, whether the failure to *instruct* on corroboration was prejudicial. Here, Eric's testimony was essential to the prosecution's case. As the prosecutor explained in closing argument, he "knew this case would rest largely on the testimony of Eric … ."

Yet not only did the court fail to instruct the jury that Eric's testimony had to be corroborated, but the court instead instructed with CALCRIM No. 301 that the testimony of one witness can prove any fact. The prosecutor emphasized that point when he told the jury: "The testimony of Eric M[.] is direct testimony. If you believe him, you're going to have to vote guilty on at least some of the charges." Jurors only needed to look at the

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[12] The People also point to Sicat's testimony that she had never seen a child's bedroom in the Pomona house. But since the jury acquitted defendant of the counts covering the period of Sicat's testimony, they were apparently unpersuaded.

other evidence, he suggested, because "some jurors may still need some convincing … ."

Given that the jury's verdicts acquitting defendant of perjury in counts 2 and 3 indicate it did not entirely believe Eric's testimony and since the evidence corroborating that testimony depended on Eric's honesty, we conclude it is reasonably likely defendant would have achieved a better result if the jury had been properly instructed.

3. Any evidentiary error was harmless.

Defendant contends she was denied her constitutional right to present a defense when the court excluded four of seven proffered police reports establishing that Eric failed to show up at the Chino Law Enforcement Station for scheduled custody exchanges.

3.1. Applicable Law

Only relevant evidence is admissible. (Evid. Code, § 350.) Relevant evidence is "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) The trial court has discretion to exclude evidence "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.)

We review a court's decision to admit or exclude evidence for abuse of discretion, and we will not disturb that decision "except on a showing the ... court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in

a manifest miscarriage of justice [citation]." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10.)

While a defendant has a due process right to present all relevant evidence that has significant probative value to her defense, in general, " 'the ordinary rules of evidence do not impermissibly infringe on the accused's right to present a defense.' " (*People v. Jones* (1998) 17 Cal.4th 279, 305.) A defendant is not entitled to engage in an unlimited inquiry into collateral matters. (*People v. Homick* (2012) 55 Cal.4th 816, 865.) Nor is she entitled to attack a witness's credibility or to prove another issue relevant to her defense with "time-consuming and remote evidence that was not obviously probative on the question" at issue. (*People v. Dement* (2011) 53 Cal.4th 1, 52, disapproved on other grounds in *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.)

3.2. The Excluded Reports

Defendant sought to introduce seven incident reports from the Chino Police Department demonstrating that Eric, in violation of the custody order, had failed to appear for scheduled custody exchanges. Ultimately, the court admitted three reports that impeached Eric's calendar—reports dated February 20, February 27, and March 6, 2014—but excluded those outside the period of Eric's calendars—reports dated February 27, March 13, and March 20, 2013. The court also excluded a report dated March 13, 2014, because it lacked sufficient detail and was too confusing to use for impeachment.

3.3. Any error was harmless beyond a reasonable doubt

We need not determine whether the court erred in excluding the police reports, because even assuming the court erred, and even assuming that error was so egregious that it violated defendant's constitutional rights, any error was harmless beyond a reasonable doubt.

"We assess federal constitutional errors under *Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*). Under *Chapman*, we must reverse unless the People 'prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.' (*Ibid.*)" (*People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165–1166.) The People have met that burden here.

First, it is unclear that the excluded reports would have actually helped defendant. The jury acquitted defendant of count 2, the perjury count for the period covering the excluded reports, but convicted her of count 5, the perjury count for the period covering the admitted reports. These verdicts may indicate that the reports tended to corroborate Eric's testimony that Audrey was living with him at least part-time.

Second, to the extent they would have been helpful to defendant, the excluded reports were cumulative of other reports that impeached Eric more directly by demonstrating that his calendar was inaccurate. (See *People v. Ramos* (1997) 15 Cal.4th 1133, 1178 ["Defendant has failed to demonstrate any infringement, particularly since all of the excluded evidence would only have served to corroborate other testimony informing the jury of the same or comparable facts."].)

Accordingly, we conclude any error was harmless beyond a reasonable doubt.

4. The court fees are not proper probation conditions.

Defendant contends, and the People properly concede, that the court should not have imposed the $40 court operations fees (Pen. Code, § 1465.8, subd. (a)(1)) and the $30 criminal conviction assessments (Gov. Code, § 70373) as terms of probation.

Fees and assessments that are "collateral to [a defendant's] crimes and punishment" (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1402) and "not oriented toward [his or her] rehabilitation but toward raising revenue for court operations" (*People v. Kim* (2011) 193 Cal.App.4th 836, 842) should not be imposed as probation conditions. (*Pacheco*, at pp. 1402–1403 [court security fee under Penal Code, § 1465.8], disapproved in part on other grounds by *People v. Trujillo* (2015) 60 Cal.4th 850, 858 and *People v. McCullough* (2013) 56 Cal.4th 589, 599; *Kim*, at pp. 842–843 [court facilities assessment under Gov. Code, § 70373].) The fees may be ordered separately, however.

Our reversal of counts 5 and 6 renders moot defendant's remaining sentencing arguments—namely, that the court improperly imposed concurrent terms of probation for counts 5 and 6 that probation for counts 5 and 6 should have been stayed under Penal Code section 654. We note, however, that probation is typically imposed only once per case.

DISPOSITION

Counts 5 and 6 are reversed and the matter is remanded for further proceedings consistent with this opinion. The probation order for count 1 is modified to delete the requirement that defendant pay, as conditions of probation, the following fees: (1) the court security fee (Pen. Code, § 1465.8); and (2) the criminal conviction assessment (Gov. Code, § 70373). In all other respects, we affirm.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.